UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

ARGUS SERVICES, INC.

Employer

and Case 19-RC-14216

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA

Petitioner

and

INTERNATIONAL UNION, UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA, LOCAL 51

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[1] in this proceeding, the undersigned finds[2]:

(1) There are no successor, settlement, or contract bars to the election.

(2) The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security officer employees assigned pursuant to the Employer's GSA contract for security within the counties of King, Snohomish,

[1] Briefs were timely received from the Employer and Petitioner and were duly considered. The Intervenor did not file a brief.

[2] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein; the labor organization involved claims to represent certain employees of the Employer and; a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Whatcom, Island, San Juan, and Skagit; and excluding all other Washington locations, office clericals, managers and supervisors as defined in the Act.

SUMMARY

The Employer is engaged in the business of providing security services to governmental entities and private businesses. The Employer assumed operations from the predecessor employer, Seattle Security, without hiatus and retained a majority of the predecessor's employees in the previously certified collective bargaining unit.

There is no dispute over the unit, as the parties stipulated to the unit described above.[3] The successor Employer and Intervenor contend the petition is barred, as a reasonable time for bargaining had not elapsed since recognition, prior to the filing of the petition. The Intervenor further argues the petition is barred due to a settlement agreement entered into by the Employer and Intervenor which was followed by a signed collective bargaining agreement. I find that the concept of a successorship bar no longer exists. I further find the settlement agreement and subsequent collective bargaining agreement are not bars to the election.

FACTS

Prior to about January 27, 2001, Seattle Security held the GSA security contract to provide security services in government buildings for the unit at issue. A collective bargaining agreement between Seattle Security and the Intervenor covering the unit employees was ratified on December 27, 2000. The new agreement was signed by the predecessor and the Intervenor on January 1, 2001.[4] The Employer took over the GSA security services contract on about January 27, 2001, without any hiatus. In doing so, the Employer immediately hired all of the predecessor's employees. Around the same time, the Employer formally recognized the Intervenor as the collective bargaining representative of the Seattle unit employees. The Employer also recognized the Intervenor as the collective bargaining representative for a unit of employees in a different local in the Portland area ("Portland unit").

Upon recognizing the Intervenor, the Employer requested that bargaining be delayed in the Seattle unit in order to first negotiate a collective bargaining agreement for the Portland unit. At the time, the Intervenor's representative, Jerry Smith, was the negotiator for both the Seattle and Portland units. Smith agreed to delay the Seattle unit negotiations. Smith and the Employer agreed that they would need only to bargain over economic terms for Seattle once the Portland agreement was set. Smith testified that bargaining over the Portland unit was completed in about April. Beginning in June 2001 and continuing through sometime in September, Smith attempted to contact Argus in order to obtain a roster of employees and to begin negotiations for the Seattle unit. Smith testified that since he was having difficulties reaching the Employer, he contacted James Carney, the International Union's vice-president, to take over the negotiations.

On October 10, 2001, the Intervenor filed Case 19-CA-27756 against the Employer, alleging the Employer had refused to bargain. The charge was withdrawn on November 29, 2001.

[3] During the hearing, the Intervenor made a motion to dismiss on the basis that the unit description in the petition was vague. As the parties stipulated to an appropriate unit, I am denying the motion. Moreover, it is consistent with the predecessor unit.

[4] The agreement was never submitted to GSA for approval by the Department of Labor.

Carney and Dave Coon, the International Director for the incumbent UGSOA, met with the Employer's representative, Sheila Leslie, on December 4, 2001.[5] (Coon testified that the Intervenor and the Employer had previously met to bargain before December 4, 2001, but he did not know how many meetings there were or when they occurred.) Carney, Coon and Leslie subsequently negotiated telephonically on December 10 and December 14. Smith testified that by December 14, none of the economic issues had been resolved but that the parties were only 50 cents apart regarding wages. A meeting was scheduled for January 15 but it is unknown from the record whether it actually took place.

On January 25, 2002, the Intervenor filed Case 19-CA-27900 against the Employer alleging the Employer (1) used dilatory tactics in refusing to bargain from about December 2001 to January 2002, (2) made unilateral changes during the same time period, and (3) engaged in bad faith bargaining by failing to work with an agreed upon bargaining agenda from about September 2001 to January 25, 2002. The Petitioner filed the instant petition on January 30, 2002. The Intervenor filed Case 19-CA-27909 on February 4, 2002, alleging the Employer dominated and interfered with the Union by assisting the Petitioner, and that the Employer engaged in direct dealing with its employees.[6]

On February 7, 2002, the Employer sent a letter to its employees stating that it was holding off on negotiations for the Seattle unit as a representation petition had been filed.

After investigating the two charges, the Region found that prior to the January 30, 2002 petition filing, the Employer had caused delay in bargaining from September 2001 to January 2002, had (contrary to agreed-upon ground rules) failed to initial-off tentative agreements agreed to in the December meetings, and had unilaterally created a site supervisor position in January 2002.[7] Most notably, I found that the Employer unlawfully refused to bargain with the Intervenor *after* the petition was filed.[8] On March 29, 2002, the Intervenor and Employer entered into an informal Board settlement agreement in order to resolve the outstanding charges. The Board Settlement Notice signed by both the Employer and Intervenor stated the Employer would, upon request, recognize and bargain in good faith with the Union for at least 6 months and embody any agreement into a written contract. The parties resumed negotiations on April 17, resulting in a signed collective bargaining agreement.[9]

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[5] Neither Carney nor Leslie were called to testify.

[6] The domination and interference allegation was subsequently dismissed.

[7] As the testimony regarding the details of the Region's findings in 19-CA-27900 and 19-CA-27909 was limited, I have taken administrative notice of the Region's findings and conclusions.

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[8] In deciding to issue Complaint, my rational was that there was some delay attributable to the Employer, starting as early as September 2001. There was also a failure to initial off tentative agreements, which could have *eventually* impacted bargaining, but had not yet done so. In viewing the pre-petition conduct along with the flat post-petition refusal to meet, I decided there was arguably a package of bargaining misconduct. However, I did not decide that the pre-petition allegations, standing alone, would have been enough to warrant a Complaint.

[9] The collective bargaining agreement was signed by the parties between April 17, 2002, and May 6, 2002.

ANALYSIS

Successor Bar

The Employer and Intervenor argue that they did not have a reasonable period of time to bargain after successor recognition.

At the time of the hearing herein, the concept of successorship bar existed. *St. Elizabeth Manor,* 329 NLRB 341 (1999). On July 22, 2002, the Board reversed *St. Elizabeth. M.V. Transportation*, 337 NLRB No. 129 (July 17, 2002). Thus, the successorship arguments are no longer relevant.

Settlement Bar

Under the settlement bar rule, an employer's agreement to settle outstanding Section 8(a)(5) unfair labor practices by agreeing to recognize and bargain with a union generally requires the dismissal of petitions filed *subsequent* to the unlawful conduct. *Douglas-Randall, Inc.*, 320 NLRB 431 (1995). I find the settlement bar rule is not applicable under the facts of this case.

In connection with Case 19-CA-27900, the Region found that the Employer had delayed bargaining, had failed to initial-off tentative agreements, and had unilaterally created a site supervisor position. These are the only violations that took place prior to the filing of the petition on January 30, 2002.

In Case 19-CA-27909, I found that beginning on February 7, 2002, the Employer flatly refused to bargain with the Intervenor due to the filing of the rival petition. This was a clear unfair labor practice, in violation of Section 8(a)(5), calling for a remedial commitment to recognize and bargain with the Union.

The two cases were assessed together to determine a remedy. It was concluded that the pre-petition conduct, to the extent it constituted a Section 8(a)(5) violation, was not serious enough, standing alone, to warrant a remedy of a bargaining order and a dismissal of the petition. While it is true there was a delay in bargaining, and a breach of the initial-off ground rule, it was felt that this conduct in part was likely unlawful only when assessed along with the post-petition refusal to meet. This conduct and the single unilateral charge were not of the severity that would warrant an overall commitment to "bargain in good faith", and dismissal of the petition.

Similarly, the post-petition conduct, while unlawful, did not warrant dismissal of the petition. The serious misconduct, having occurred *after* the petition was filed, would never warrant a remedy of dismissal of the petition. Rather, only a standard blocking of the petition while the conduct was remedied. The settlement agreement was not intended by me to create a settlement bar and a possible contract bar, but only to require a posting, and a period to permit the Union to get back to the table and try to get a contract. Any contract secured under these circumstances would not constitute a contract bar to the election. It would merely allow the Union to be in the same position, at the time of the election, that it would have been in if the Employer had not refused to meet during the pendency of the "raiding" petition. The purpose of the settlement agreement -- the remedy -- was to clear the air between the Employer and Incumbent and remedy the *post-petition* refusal-to-bargain violation by allowing the parties time

to re-establish their bargaining relationship and to post a Notice, before the election process resumed. Thus, the settlement agreement did not bar a challenge to the union's representative status; rather, it just postponed any such action for at least six months, to allow the remedial action to take place. Both the Employer and Intervenor signed the settlement agreement. The petition was not dismissed at the time of the settlement, and no challenge to the non-dismissal was made. Based on the facts of this case, as the pre-petition unfair labor practices were at worst minor violations of the Act, the settlement agreement does not act as a bar to the petition. A post-petition unfair labor practice could never result in a bar to an election, or a dismissal of the petition. Thus, the only "bar" was to block the petition until the unfair labor practices were remedied. That process was complete once the 60-day posting expired and the parties reached a contract (if not sooner).

Contract Bar

The Intervener alleges the collective bargaining agreement resulting from the April 17, 2002 negotiations bars the instant petition. In other words, the assumed settlement bar turned into a contract bar. I find it does not.

A collective bargaining agreement must be signed before the filing of a petition to serve as a bar. *Appalachian Shale Products Co.,* 121 NLRB 1160 (1958). Here, the petition was filed months prior to the signing of the collective bargaining agreement. Thus, the agreement cannot act as a traditional contract bar.

Since I have determined that there is no bar to this petition, I shall direct an election.

There are approximately 80 employees in the Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union, Security, Police, and Fire Professionals of America, or International Union, United Government Security Officers of America, Local 51, or neither.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them.

Excelsior Underwear, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before July 30, 2002**.** No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by August 6, 2002.

DATED at Seattle, Washington, this 23rd day of July 2002.

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